

House Bill 902

By: Representatives Cox of the 102nd, Lunsford of the 110th, May of the 111th, Rice of the 51st, Loudermilk of the 14th, and others

A BILL TO BE ENTITLED
AN ACT

1 To provide for legislative findings; to amend Article 1 of Chapter 10 of Title 17 of the
2 Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of
3 punishment, so as to repeal certain provisions regarding sentencing of defendants guilty of
4 crimes involving bias or prejudice, circumstances, and parole; to repeal certain provisions
5 relating to notification to seek enhanced penalty; to repeal certain provisions relating to
6 determination of defendant's guilt, object of the offense, and enhancement of sentence; to
7 provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 The General Assembly recognizes the Supreme Court of Georgia's decision in *Botts v. State*,
11 278 Ga. 538 (2004) which declared Code Section 17-10-17 unconstitutionally vague,
12 declared it violative of due process rights guaranteed by the State and Federal Constitutions,
13 and found that it "impermissibly delegates basic policy matters to policemen, judges, and
14 juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary
15 and discriminatory applications." The General Assembly finds that the State should not
16 interfere with freedom of speech, thought, and expression, that such matters are
17 constitutionally protected, and therefore codifying policy on such matters should be repealed.
18 The General Assembly further finds that encouraging police to treat victims differently
19 depending on whether they fit into a special status created by statute causes victims of similar
20 crimes to be treated disparately, a concept repugnant to the Georgia and United States
21 Constitutions. The General Assembly further finds that hate crime laws require the State to
22 treat victims of the same crime differently, solely because the State has decided that one
23 motivation for committing the crime on a person is more heinous than another, according to
24 a statute, and since most all crimes are motivated by hate and greed in some way, a statute
25 calling for increased punishment for certain offenders is unnecessary and unconstitutional.

SECTION 2.

Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of punishment, is amended by revising Code Section 17-10-17, relating to sentencing of defendants guilty of crimes involving bias or prejudice, circumstances, and parole, as follows:

"17-10-17.

~~(a) Subject to the notice requirement provided in Code Section 17-10-18 and in enhancement of the penalty imposed, if the trier of fact determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property of the victim as the object of the offense because of bias or prejudice, the judge imposing sentence shall:~~

~~(1) If the offense for which the defendant was convicted is a misdemeanor, increase the sentence and the fine normally imposed by the court through court policy or voluntary sentencing guidelines by 50 percent up to the maximum authorized by law;~~

~~(2) If the offense for which the defendant was convicted is a misdemeanor of a high and aggravated nature, increase the sentence and fine normally imposed by the court through court policy or voluntary sentencing guidelines by 50 percent up to the maximum authorized by law; or~~

~~(3) If the offense for which the defendant was convicted is a felony, increase the sentence normally imposed by the court through court policy or voluntary sentencing guidelines by up to five years, not to exceed the maximum authorized by law.~~

~~(b) The judge shall state when the judge imposes the sentence the amount of the increase of the sentence based on the application of subsection (a) of this Code section.~~

~~(c) Any person convicted of a felony and given an enhanced sentence under this Code section shall not be eligible for any form of parole or early release until such person has served at least 90 percent of the sentence imposed by the sentencing court. Reserved."~~

SECTION 3.

Said article is further amended by revising Code Section 17-10-18, relating to notification to seek enhanced penalty, as follows:

"17-10-18.

~~At any time after the filing of an indictment or accusation but not later than the arraignment, the state shall notify the defendant of its intention to seek the enhanced penalty or penalties authorized by Code Section 17-10-17. The notice shall be in writing and shall allege the specific factor or factors authorizing an enhanced sentence in the case pursuant to Code Section 17-10-17. Reserved."~~

SECTION 4.

Said article is further amended by revising Code Section 17-10-19, relating to determination of defendant's guilt, object of the offense, and enhancement of sentence, as follows:

"17-10-19.

~~(a) In a case where notice has been given pursuant to Code Section 17-10-18, the trier of fact shall initially determine the defendant's guilt on the charge or charges. If the trier of fact finds the defendant guilty of such charge or charges, the trial shall immediately be recommenced to receive evidence as is relevant to determine whether the defendant intentionally selected the victim or the property of the victim as the object of the offense as set forth in the notice given pursuant to Code Section 17-10-18.~~

~~(b) If the trier of fact determines beyond a reasonable doubt that the defendant so acted, the judge shall enhance the sentence imposed in accordance with the provisions of Code Section 17-10-17. Reserved.~~

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.